



State of California - The Resources Agency
DEPARTMENT OF FISH AND GAME
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ARNOLD SCHWARZENEGGER, Governor



San Joaquin Valley and Southern Sierra Region
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October 27, 2004

Ms. Mary M. Miller, Chief
Recreation and Environmental Studies Section
California Department of Water Resources
Division of Planning and Local Assistance
Southern District
770 Fairmont Avenue, Suite 102
Glendale, California 91203-1035

Dear Ms. Miller:

Notice of Preparation of a Draft
Environmental Impact Report
Tehachapi North Afterbay Project

This letter is in response to your Notice of Preparation regarding the Tehachapi North Afterbay Project (Project). The proposed Project includes the construction of a reservoir northeast of the bifurcation of the East and West Branch of the California Aqueduct. The Project would provide additional water storage and allow downstream facilities to operate for short periods of time without relying on the pumping operations of the various upstream pumping plants. This would reduce expensive pumping during peak electrical demand periods and provide operational flexibility and reduced costs. The proposed Project would include the construction of a 71-acre (approximate) afterbay (reservoir), related inlet, outlet and bypass channels, associated buildings, and a spoil embankment area. The total of 195 acres (approximately) of land currently owned by Tejon Ranch and traditionally used for ranching, grazing, and resource extraction will be affected by the Project. The Department of Fish and Game (Department) appreciates the opportunity to comment on the Project at this time and offers the following comments.

DEPARTMENT JURISDICTION

Trustee Agency Authority: Pursuant to Fish and Game Code Section (FGC§) 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As Trustee Agency for fish and wildlife resources, we are responsible for providing, as available, biological

expertise to review and comment on environmental documents and impacts arising from project activities as those terms are used in the California Environmental Quality Act (CEQA).

The Draft Environmental Impact Report (DEIR) should discuss potential impacts to all fish, wildlife and plants on the Project site including proposed avoidance, minimization and mitigation measures.

3a

Responsible Agency Role: The Department will most likely act as a Responsible Agency for this Project. If so, the Department must actively participate in the Lead Agency's CEQA process, review the Lead Agency's CEQA document, and use that document when making a decision on the Project. The Department must rely on the Lead Agency's environmental document to prepare and issue its own findings regarding the Project (CEQA Guidelines, Sections 15096 and 15381) when issuing a Stream Alteration Agreement discussed below. The DEIR should include full disclosure of the impacts avoidance, minimization and mitigation associated with the Stream Alteration Agreement.

3b

POTENTIAL PROJECT IMPACTS

Stream Alteration Agreement: The Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect fish (including mollusks, crustaceans, invertebrates, and amphibians, including any part, spawn, or ova thereof) or wildlife resources. Pursuant to Fish and Game Code (FGC§) 1600 et seq., it is unlawful for any entity to substantially divert or obstruct the natural flow or substantially change or use any material from the bed, channel, or bank of any river, stream, or lake, or deposit or dispose of debris, waste or other material containing crumbled, flaked, or ground pavement where it may pass into any, river, stream or lake without first notifying the Department of that activity. The Department shall, when an existing fish or wildlife resource may be substantially adversely affected by that activity, notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife.

The Project will require a Stream Alteration Agreement for work that occurs at the "unnamed" drainage and any other waterway jurisdictional under FGC§ 1600 et seq. affected by Project construction.

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Also the Project description states that the Department of Water Resources (DWR) would notify the Department two week prior to draining the Tehachapi East Afterbay (Pool 42) in order to facilitate possible management opportunities

3d

of the local fish populations. We suggest that DWR maintain early coordination with the Department regarding this matter and the Department be notified a minimum of two months before this action takes place. The Department may require DWR to develop and implement a "fish rescue" management plan which would require Department approval. Species composition of Pool 42 should be determined and continued communication with the Department maintained so that fishery management activities can be resolved if they are warranted.

3d cont.

Bird Protection: The Department has jurisdiction over any actions which may result in the disturbance or destruction of active nesting sites for a variety of bird species. Removal of active nests could be considered a violation of Fish and Game Code Sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take or possession of any migratory non-game bird). All Project-related activities should be designed so that they remain in compliance with these Code Sections. The DEIR should include discussions regarding impacts to potentially nesting birds, avoidance, minimization, and mitigation measures.

3e

Preliminary biological surveys have shown the presence of burrowing owls near the Project footprint. Pre-construction protocol level surveys should be required to determine actively used owl burrows. Once active burrows are determined, adequate avoidance and mitigation measures should be incorporated into Project construction. Possible construction of artificial burrows on nearby DWR land could be considered as mitigation for direct impacts to the burrowing owl.

Pre-construction surveys for other nesting birds should also be completed.

Coast Horned Lizard: Preliminary biological surveys have shown the likely presence of the coast horned lizard within the Project footprint. Focused surveys should be required to better determine the presence or absence of this species. Once these surveys are completed, adequate avoidance and mitigation measures should be developed in conjunction with Department personnel and incorporated into Project construction. The DEIR should include discussions regarding impacts to this species, avoidance, minimization, and mitigation measures.

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Range Land and Associated Upland Resources: The Project would affect some range lands that may include drainages, and other wildlife resources. Impacts could include; loss or degradation of habitat from Project construction, road widening, utility construction, spoils storage, increased traffic-related injury or mortality to wildlife, and lighting that could disrupt night-active species. Mitigation for these impacts and especially for the permanent loss of wildlife

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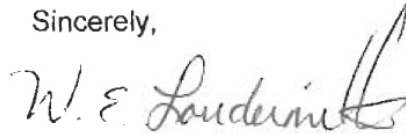
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habitat should include impact minimization, take avoidance, and compensation. DWR has consulted with the Department regarding compensation for Project-related impacts. A suggested compensation alternative is the DWR's purchase of +/-235 acres at a location on Tejon Ranch, approximately two miles west of the Project site. This property is adjacent to an already existing +/-50 acre mitigation site. The Department finds that this specific land would be suitable if DWR provides compensation at a 1 to 1 ratio and performs some Department approved habitat enhancement on the compensation land. If no habitat enhancement is provided a compensation rate of 1.1 to 1 would be appropriate.

3g cont.

We thank you for your sincere willingness to involve the Department in the early and continued development of this Project and look forward to reviewing the Project's DEIR. If you have any questions or need more information regarding this matter, please contact Mr. Clarence Mayott at (559) 243-4015, extension 225 or the address listed above.

Sincerely,



W. E. Loudermilk
Regional Manager

cc: Ms. Annette Jennings
Department of Fish and Game

Mr. Clarence Mayott
Department of Fish and Game

California Department of Fish and Game

October 27, 2004

- 3a** The proposed project's potential impacts to fish, wildlife, and plants, including proposed avoidance, minimization, and mitigation measures, are discussed in Section 3.2, Biological Resources, of the Draft EIR.
- 3b** The Notice of Preparation (NOP) was sent to both W. E. Loudermilk, Regional Manager, and Clarence Mayott, San Joaquin Valley-Southern Sierra Region 4, of the California Department of Fish and Game (CDFG). During the preparation of the Draft EIR, Jim Starr, Central Valley Bay-Delta Branch, and Clarence Mayott were consulted on potential impacts and mitigation measures on multiple occasions. Additionally, the Draft EIR was mailed to Clarence Mayott for review and comment. As such, the California Department of Fish and Game has been actively involved in the CEQA process for the proposed project, reviewed and commented on the NOP, and received a copy of the Draft EIR. Additionally, the Draft EIR, Section 3.2, provides disclosure of project impacts and avoidance, minimization, and mitigation measures to support the Stream Alteration Agreement.
- 3c** As discussed in Section 3.2.4.2 of the Draft EIR, "A careful delineation of the effects to the unnamed drainage and Oso Creek drainage would be provided in the 1602 notification that is to be submitted to the CDFG and additional mitigation for these impacts may be defined in the conditions of the Streambed Alteration Agreement." This notification was submitted to CDFG on October 14, 2004.
- 3d** The CDWR has been in consultation with the CDFG regarding future draining of the proposed Tehachapi East Afterbay for maintenance purposes. This provided the basis for the environmental commitment to notify the CDFG two weeks prior to draining the Tehachapi East Afterbay. The CDWR will continue to coordinate with the CDFG on notification and fishery management requirements.
- 3e** As discussed in Section 3.2.4.2 of the Draft EIR, Mitigation Measures BIO-5 through BIO-9 would reduce impacts to active nesting sites for bird species to a less-than-significant level. Mitigation measures include pre-construction bird surveys to identify breeding pairs or active nests; protocol surveys for burrowing owls to identify all suitable owl burrows within 500 feet of the construction area and all access roads, and confirm that no burrows with active nests will be disturbed until a qualified biologist has determined that all birds have fledged; a no-disturbance zone for burrowing owls within the unnamed drainage north of the project site; and a training program to visually recognize special status species that may be present on the project site, identify the location of no disturbance zones, and adequately understand and implement biological mitigation measures.
- 3f** As discussed in Section 3.2.4.2 of the Draft EIR, Mitigation Measures BIO-1 through BIO-4 and BIO-8 through BIO-12, would not completely avoid impacts to the coast horned lizard. A significant unavoidable impact to coast horned lizards could occur as a result of the proposed project. Mitigation measures include focused surveys for the coast horned lizards within the unnamed drainage and alluvial floodplain to the east, south of spoil pile #1 (BIO-10), and the Oso Creek Drainage within the area that will be acquired to compensate for permanent impacts (BIO-11). To date, focused surveys, conducted between September and November 2004, did not detect the presence of this species in the proposed project area. A habitat assessment will be completed to determine if the acquired area may be enhanced

to improve suitable coast horned lizard habitat, and to potentially relocate any coast horned lizards that may be found during project construction. Biological Monitors will also be present to capture coast horned lizards that are disturbed from their habitat and that are at risk during the initial ground disturbance. A protocol will be established in coordination with CDFG prior to ground disturbance to define the method of capture, handling, and relocation of any coast horned lizards (BIO-12).

- 3g** The CDWR would set aside approximately 232 acres immediately southwest of the proposed project site, on the other side of the Aqueduct, to compensate for the 210 acres that would be permanently lost as a result of the proposed project. This meets the project mitigation compensation ratio minimum of 1 to 1. Additionally, Mitigation Measure BIO-4 states that the CDWR will develop and implement a Habitat Enhancement Plan for this acquired mitigation land, which will be submitted to the CDFG for their review. Therefore, the CDWR would meet the CDFG requirements for compensation land.